

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

PROGRESSIVE DIRECT INSURANCE
COMPANY d/b/a PROGRESSIVE
NORTHERN INSURANCE COMPANY,

Plaintiff,

v.

No. CIV 16-1288

SCOTT HARTZ,

Defendant.

NOTICE OF REMOVAL OF ACTION

The United States of America, acting on behalf of Scott Hartz, named defendant in the above-captioned action, hereby gives notice to this Court of the removal of a civil action commenced in the Bernalillo Metropolitan Court, State of New Mexico, Case No. T-4-CV-2016-01057. This removal is pursuant to 28 U.S.C. § 2679(d)(2) which provides that upon certification by the United States Attorney General that the defendant employee was acting within the scope of his/her employment, a civil action proceeding in state court upon such claim shall be removed to the District Court of the United States embracing the place in which the action or proceeding is pending. The United States submits the following:

1. A civil action has been brought in the Bernalillo County Metropolitan Court, State of New Mexico, against Defendant Scott Hartz, a federal employee acting within the scope of his employment as an employee of the Drug Enforcement Administration, United States Department of Justice, when the alleged incident that gives rise to Plaintiff's claim occurred. Plaintiff's subrogation claim is for damages resulting from an automobile collision allegedly caused by Defendant ("Civil Complaint").

2. Filed with this Notice of Removal is Exhibit A, a Certification by Damon P. Martinez, United States Attorney for the District of New Mexico, certifying that Defendant Scott

Hartz was acting within the scope of his employment at the time of the allegations and/or incidents giving rise to this suit. The authority to certify scope of office or employment has been delegated to the United States Attorney. *See* 28 C.F.R. § 15.4.

3. In accordance with 28 U.S.C. § 2679(d)(2), upon certification that the defendant was acting within the scope of his employment with the Government, the action commenced in the State of New Mexico Bernalillo County Metropolitan Court shall be removed to the District Court for the District of New Mexico and such action or proceeding shall be deemed to be an action or proceeding brought against the United States.

4. The Metropolitan Court action is properly subject to removal under 28 U.S.C. §§ 1441 (a), 1442(a)(1) and 2679(d)(2). Plaintiff's allegations appear to be controlled by the provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 *et seq.*, and this is, therefore, an action over which the United States District Court has exclusive jurisdiction.

5. Attached to this Notice of Removal as Exhibit B are copies of all pleadings that have been received by and are in the possession of the United States in this action.

WHEREFORE, the United States gives notice that Cause No. T-4-CV-2016-01057 in the Metropolitan Court for the County of Bernalillo, State of New Mexico, is removed to this Court.

Respectfully submitted,

DAMON P. MARTINEZ
United States Attorney

/s/ Michael H. Hoses 11/23/16
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 23, 2016, I served the foregoing pleading on the following non-CM/ECF Participants via first class mail, postage prepaid, addressed to:

Jason P. Gubbins, Esq.
James J. Eufinger, Esq.
Jonathan L. Shoener, Esq.
Faber and Brand, LLC
P.O. Box 10110
Columbia, MO 65205

/s/ Michael H. Hoses 11/23/16

MICHAEL H. HOSES

Assistant United States Attorney